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Supreme Court, U.S.
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No. 91-1967

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1992

NICHOLAS DAMER,
Petitioner,

VS.

SUPERIOR COURT IN AND FOR
THE CITY AND COUNTY OF SAN FRANCISCO,
Respondent,

JOHN C. ELSTEAD, GERALD C. STERNS,
LAW OFFICES OF GERALD C. STERNS,
ELIZABETH WALKER,
LAWYERS MUTUAL INSURANCE COMPANY,
WEIL ADJUSTERS & CONSULTANTS, INC.,
GERSON MEHLMAN, and ROBERT L. DENEBEIM,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

MEMORANDUM OPPOSING CERTIORARI

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Petitioner's request—that the Court rule the dismissal of an appeal unconstitutional—is weakened by the fact that "There is, of course, no constitutional right to an appeal." *See, Jones v. Barnes,* 463 U.S. 745, 751 (1983). As petitioner concedes, there are absolutely no grounds for review under existing law.

This is the same case in which petitioner Damer sought certiorari last year, in No. 90-1963. Petitioner Damer is an attorney. On behalf of a client, he commenced in a California trial

court, the underlying action against several parties. While plaintiff's case was being presented at trial, the parties participated in a judicially supervised settlement conference. During that conference, which took place over a three-day period from March 7 through March 9, 1990, the parties reached a settlement agreement.

The settlement agreement provided that the terms of the settlement would be confidential, the court file would be temporarily sealed subject to continuing judicial review, and the files of plaintiff's attorney, petitioner Damer, would be deposited with a receiver. The court found good cause for temporarily sealing the file, and approved the terms of the settlement agreement. The court explained that it was protecting the records so that they would remain available to the parties, the attorneys, and any investigating governmental agency. The sealing order was later modified, by order filed on June 19, 1990, to provide that only specified documents would remain sealed.

Petitioner immediately stated his intention not to comply with the terms of the settlement. He withdrew as counsel for plaintiff. During the hearing on March 9, 1990, the court ordered petitioner to comply with plaintiff's wishes and the terms of her agreement. Petitioner then violated the order in several ways. Among them was his refusal to relinquish the documents as ordered. After an order to show cause and a hearing, petitioner was found in contempt of court based on three violations. On August 29, 1990, a judgment of contempt, fining petitioner in the amount of $3,000 ($1,000 for each violation), was entered.

Petitioner commenced a series of appeals. [1] He unsuccessfully appealed the contempt judgment in the California Court of Appeal, the California Supreme Court, and this Court. He also separately appealed the violated orders themselves.

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[1] Petitioner has filed the following appeals and petitions in this case:

1. Petition for Writ (regarding amount of sanctions), California Court of Appeal, A042593, June 14, 1988.
2. Notice of Appeal (from summary judgment in co-defendant's favor) California Court of Appeal, A043094, July 22, 1988.

The California Court of Appeal issued an order on October 22, 1991, dismissing many of petitioner's appeals unconditionally because of his lack of standing. It ordered other appeals dismissed unless petitioner complied with portions of the trial court's order and delivered referenced documents by November 5, 1991. Instead of complying with the Court of Appeal's orders, petitioner

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3. Notice of Appeal (from order denying motion forbidding confidential settlement), California Court of Appeal, A043290, August 15, 1988.
4. Petition for Writ (regarding underlying orders), California Court of Appeal, A049125, March 23, 1990.
5. Petition for Writ (regarding denial of petition No. A049125), California Supreme Court, S015141, April 18, 1990.
6. Notice of Appeal (from numerous orders), California Court of Appeal, A049857, May 25, 1990.
7. Petition for Writ of Certiorari of Prohibition (regarding contempt judgment and confidentiality and settlement agreement orders), California Court of Appeal, A051211, October 5, 1990.
8. Notice of Appeal (from contempt order and sanctions), California Court of Appeal, A051426, October 25, 1990.
9. Petition for Review (from denial of petition A051211), California Supreme Court, S019454, February 4, 1991.
10. Petition for Writ of Certiorari (from denial of petition S019454, United States Supreme Court, 90-1963, June 25, 1991.
11. Petition for Writ of Supersedeas (application for stay of order conditionally dismissing appeals A049857 and A051426), California Court of Appeal, October 28, 1991.
12. Petition for Writ of Mandate, Transfer, Supersedeas or Prohibition (for stay of order conditionally dismissing appeals), California Supreme Court, S023852, November 15, 1991.
13. Petition for Rehearing (for rehearing of November 1991 order of dismissal of A049857 AND A051426), California Court of Appeal, December 4, 1991.
14. Petition for Review (of dismissal of A049857 and A051426), California Supreme Court, December 30, 1991.

filed a petition for writ of supersedeas. The Court of Appeal denied the petition and, in an order dated November 5, 1991, again ordered the appeals dismissed unless petitioner delivered the documents. Petitioner refused to do so and his appeals were dismissed in an order dated November 19, 1991. Petitioner Damer seeks to have this Court rule that the dismissal was unconstitutional.

Because of this Court's holding that there is no constitutional right that prevents a state court from dismissing an appeal, there is no reason for this Court to grant certiorari in this case. *National Union v. Arnold,* 348 U.S. 37 (1954). The order of dismissal is correct and does not violate the Constitution. The petition does not concern an important question that is the subject of a conflict of decisions. The petition should be denied.

Respectfully submitted,

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